

### **REMARKS**

Reconsideration of the present application in view of the above amendments and following remarks is respectfully requested.

### **Status of the Claims**

Claims 26, 28-30, 32-34, 36-37 and 39-43 are presented. Claims 26, 28-30, 32-34, 36-37, and 39-41 are amended. Independent claim 26 is amended to "consisting of" language regarding the micro-emulsion composition, and to clarify that "at least one" of components (a), (b) and (c) is present in the micro-emulsion composition. The remaining dependent claims are amended to conform to the closed "consisting of" language of the base claim. Support is found throughout the specification as originally filed.

No claims are cancelled in the present action. New claims 42-43 are added. Support for component (e) is found in the specification as originally filed, *inter alia*, on page 10, line 32 through page 11, line 4, and the Examples, page 13.

No new matter has been introduced.

### **Summary of the Invention as Claimed**

As presently amended, the claims are directed to a method for treating plants with an agrochemical comprising spraying the plants with the agrochemical in combination with a micro-emulsion composition **consisting of (a) at least one** oil phase component, **(b) at least one** hydrophilic emulsifier, **(c) at least one** lipophilic co-emulsifier, and **(d) water**. As now claimed, the agrochemical is a water-soluble or substantially water-soluble agrochemical (claim 26). In preferred embodiments the agrochemical is a glyphosate herbicide or salt thereof (claims 37 and 41). In another embodiment, the micro-emulsion composition consists of components (a) – (d) above, and (e) at least one auxiliary selected from a Markush group of such compounds (claim 42). Preferred compounds (e) include citric acid, propylene glycol and mixtures thereof (claim 43).

**Rejections under 35 U.S.C. § 103(a)**

Previously pending claims 26, 28-30, 32-34, 36-37 and 39-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Capuzzi et al. (US 5,905,072; "Capuzzi") and Auda et al. (US 6,586,366; "Auda"). This rejection is respectfully traversed.

Previously pending claims 26, 28-30, 32-34, 36-37 and 39-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Capuzzi, Auda and Foerster et al. (US 6,255,253; "Foerster"). The rejection is respectfully traversed.

Auda discloses oil-based emulsifiable concentrates and agrochemical formulations resulting therefrom, comprising (a) at least one oil component; (b) at least one surfactant hydrocarbyl saccharide (alkyl polyglycoside); and (c) at least one other nonionic polyalkoxylated surfactant. Agrochemical agents, including the herbicide glyphosate, may be included.

As a preliminary matter, applicants submit that Auda is not prior art under 35 U.S.C. § 102. Applicants respectfully point out that the present application claims the benefit of Provisional Application No. 60/453,768, filed on March 11, 2003. Applicants believe that a priority claim under 35 U.S.C. § 119(e) and § 120 has been perfected, M.P.E.P. § 706.02. Auda issued on July 1, 2003, that is, after applicants' priority date. Therefore, Auda, should be disqualified as prior art to the present application.

Once Auda is disqualified as prior art under 35 U.S.C. § 102, applicants respectfully submit that the Examiner has failed to establish a case of *prima facie* obviousness over Capuzzi, with or without Foerster.

Capuzzi discloses adjuvants for systemic fungicides in the form of a microemulsion comprising 10-30% water, 20-50% of a mixture of methyl esters of fatty acids, 0.5-20% of **anionic** surfactant, 5-20% of at least one nonionic surfactant having an HLB of 13-18 and a specific cloud point, which may be an

alkyl polyglucoside, and 5-25% of at least one nonionic surfactant with an HLB of 10-12. It is noted that Capuzzi requires an **anionic** surfactant, selected from alkylbenzenesulfonates, alkylsulfosuccinates, and their metal salts, in contrast to applicants' claims, which have been closed to further components in the present amendments.

Even though applicants do not necessarily agree with the Examiner's characterizations of Capuzzi, in order to further prosecution, the claims have been amended in a way which obviates the Examiners rejections. Thus, base claim 26 has been amended to limit the micro-emulsion composition to one **consisting of** recited components (a) – (d). Also, new claim 42 discloses a micro-emulsion composition **consisting of** only recited components (a) – (e). This closes the composition to other components, including the anionic surfactant required by Capuzzi.

In a previous Office Action (dated 11/05/2008) the Examiner indicated that the addition of "consisting of" constituted new matter (35 U.S.C. § 112, first paragraph) in that all adjuvant compositions displayed in Table 1, page 13, also contain either citric acid or propylene glycol, or both. Therefore new claims 42 and 43 have been added with closed "consisting of" language and at least one auxiliary compound (e) selected from a Markush group of such substances. Specifically, component (e) may be citric acid, propylene glycol or mixtures thereof (claim 43). Thus the Examples are now represented by new claims 42 and, specifically, 43.

Foerster discloses an agrochemical microemulsion containing (a) an alkyl (poly)glycoside, and (b) an oil phase containing (i) a water-insoluble organic solvent selected from a Markush group, and (ii) a **water-insoluble** agrochemical. In view of the closed language of applicants' claims as presently amended, Foerster's requirement for a water-insoluble agrochemical makes Foerster an improper reference for the rejection under U.S.C. § 103(a).

For at least the preceding reasons, applicants believe that Capuzzi, with or without Foerster, and in the absence of Auda, fails to teach or suggest, either expressly or inherently, all of the claim limitations for applicants' pending claims as presently amended. Accordingly, applicants' claims as presently amended define novel and patentably unobvious subject matter over the cited art.

### **Conclusion**

In summary, in view of the above claim amendments and remarks, applicants believe that the pending claims as presently amended are in condition for allowance. The Examiner is respectfully requested to reconsider, withdraw the rejections and allow the claims.

If any additional fees are required in support of this application, authorization is granted to charge our Deposit Account No. 50-1943.

Respectfully submitted,

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